IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 37259 of 2007(I)

PETITIONER:

BHANUMATHI, D/O. KOCHUPENNU,
AGED 59 YEARS, RESIDING AT CHARUVILA PUTHEN VEEDU,
ANYARTHOLU P.O., NIRMALAPURAM,KARUNAPURAM VILLAGE,
UDUMPANCHOLA TALUK.

BY ADV. SRI. K.SIJU
SRI.PRATHEESH.P

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
VYDHYUTHI BHAVAN, PATTOM P.O.,THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.

2. ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB SECTION, KATTAPPANA.

BY SC SHRI. SHRI. P.P.THAJUDEEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.37259 OF 2007

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Dated this the 17th day of December 2007

JUDGMENT

This writ petition is filed to set aside Exts.P2, P3 and P6 orders and to restore O.S.No.36 of 2006. Ext.P2 would show that as the balance court fee was not paid, the plaint was rejected. Ext.P3 is the decree. Ext.P6 is an order in the petition filed under Order 9 Rule 9 C.P.C. for restoration of the suit with a petition to condone the delay of 23 days. The court below rejected the application on the ground that an application under Order 9 Rule 9 is not maintainable. One cannot find fault with the learned Munsiff for dismissing the application under Order 9 Rule 9 for the reason that when a plaint is rejected under Order 7 Rule 11 C.P.C. it is a decree under Section 2(2) of the C.P.C. and therefore it is appealable and therefore Order 9 Rule 9 will not lie. Therefore, I cannot interfere with the decision rendered by the court below on that point. But, it is seen that the petitioner has filed another application for review of the order which is pending as Ext.P7. This Court in the decision reported in Felix Varkey v. Municipal Secretary(2006 (4) KLT 31 SN 46) held that when a plaint is rejected for non-payment of

balance court fee--review petition filed after remitting balance court fee is maintainable.

Therefore, I direct the court below to consider Ext.P7 application in the light of the decision mentioned above and if there are grounds to consider it sympathetically.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-